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United States of America
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8 IN THE UNITED STATES DISTRICT COURT
9
EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ESTEBAN XAVIER MONROY,

14 Defendant.
15

CASE NO. 2:23-CR-165-KJM

STIPULATION AND JOINT REQUEST FOR
PROTECTIVE ORDER; ~~PROPOSED~~
PROTECTIVE ORDER

16 **I. STIPULATION**

17 1. Plaintiff United States of America, by and through its counsel of record, and defendant
Esteban Xavier Monroy, by and through his counsel of record (“Defendant” and “Defense Counsel”),
18 for the reasons set forth below, hereby stipulate, agree, and jointly request that the Court enter a
Protective Order in this case restricting the use and dissemination of certain materials that could identify
19 undercover agents and/or confidential sources, and/or that contain personal identifying information and
20 other confidential information of real persons.

21 2. This Court may enter protective orders pursuant to Rule 16(d) of the Federal Rules of
Criminal Procedure, Local Rule 141.1, and its general supervisory authority.

22 3. On July 6, 2023, the Grand Jury returned an indictment charging possession with intent to
distribute heroin, in violation of 21 U.S.C. § 841(a)(1) (Count One), felon in possession of a firearm, in
23 violation of 18 U.S.C. § 922(g)(1) (Count Two), and possession of a firearm in furtherance of a drug
24 trafficking offense, in violation of 18 U.S.C. § 924(c).

1 4. The government intends to produce to Defense Counsel: (1) investigative reports and/or
2 other documents that could identify law enforcement undercover agents and/or confidential sources; and
3 (2) materials containing personal identifying information (“PII”) (as defined in E. D. Cal. L. R. 140(a),
4 excluding information concerning the Defendant). Discovery containing the identities of undercover
5 agents, the identities of law enforcement confidential sources, or PII will be considered “Protected
6 Material” as described in this stipulation and order, and will collectively be referred to herein as
7 “Protected Material.” Such Protected Material shall be identified by the government when it is produced
8 to the defense, in a cover letter, or by a specially-designated Bates range, or through an email message.

9 5. Defense counsel shall not disclose any of the Protected Material or its contents directly or
10 indirectly to any person other than their respective defendant/client, potential witnesses that they are
11 interviewing or preparing for trial, counsel for those witnesses, or anyone employed by defense counsel
12 (such as attorneys, paralegals, secretaries, experts, investigators, and law clerks) in connection with the
13 representation of the defendant in this criminal case.

14 6. Defendant may view the Protected Material in the presence of defense counsel, but may
15 not retain a copy or otherwise disseminate the contents.

16 7. The Protected Material may only be used in connection with the litigation of this case and
17 for no other purpose.

18 8. If there is a substitution of counsel prior to final disposition of the case, new counsel of
19 record must join this Protective Order before any protected discovery may be transferred from the
20 undersigned defense counsel to the new defense counsel. New defense counsel will then become
21 defense counsel for purposes of this Order, and become the custodian of the protected discovery, and
22 shall then become responsible, upon conclusion of appellate and post-conviction proceedings, for
23 complying with the provisions set forth in paragraph 14. All members of the defense counsel, whether
24 current or past counsel, are at all times subject to the Order and are not relieved by termination of
25 representation or conclusion of the prosecution.

26 9. Defense counsel will store the Protected Material in a secure place, such as a locked
27 office, and shall use reasonable care to ensure that it is not disclosed to third persons in violation of this
28 agreement. To the extent any of the protected discovery, or any copies or reproductions thereof, are

1 stored electronically, the protected discovery shall be stored on a password-protected or encrypted
2 storage medium or device. Encryption keys shall be stored securely and not written on the storage
3 media they unlock.

4 10. If defense counsel makes, or causes to be made, any further copies of any of the Protected
5 Material, defense counsel will ensure that the following notation is inscribed on each copy made, if the
6 confidentiality of the documents is otherwise not already present on the copied file(s) or hard copies:
7 “CONFIDENTIAL – May Not Be Disseminated Except in Accordance With Court Protective Order.”

8 11. If defense counsel releases custody of any of the Protected Material, or authorized copies
9 thereof, to any person described in paragraph three, defense counsel shall provide such recipients with
10 copies of this Order. The parties agree that defense counsel, defense investigators, and support staff
11 shall not provide the Protected Material to the defendant or any other witness or copies of the Protected
12 Material except for the limited situations identified in this Order.

13 12. If allowed by law, defense counsel shall advise government counsel of any subpoenas,
14 document requests or claims for access to the Protected Material by third parties if defense counsel is
15 considering disseminating any of the Protected Material to a third party in order that the government
16 may take action to resist or comply with such demands as it may deem appropriate.

17 13. Defense counsel shall be responsible for advising the defendant, or her client, her
18 employees and other members of the defense team, and defense witnesses of the contents of this Order.
19 Defense counsel shall not provide or make available to any person described in paragraph five the
20 Protected Material until that individual has been provided a copy of this Order by defense counsel.

21 14. Upon final disposition of this case, including exhaustion of direct and collateral appellate
22 proceedings or the exhaustion of defense counsel’s professional obligations as dictated by the California
23 State Bar, defense counsel shall return the protected discovery to the government, or certify in writing
24 that the protected discovery has been destroyed, or, if defense counsel seeks to maintain the protected
25 discovery in the defense counsel’s files beyond the above time frame, seek modification of this provision
26 from the Court.

27 15. Nothing in this Order shall preclude a party from seeking a more restrictive or permissive
28 protective order or other court order with regard to particular discovery items.

16. Defense counsel observes the right to file objections with the Court concerned the protected status of any material produced by the government, and to seek a less restrictive protective order, including an order requiring redactions in lieu of more restrictive measures, to ensure the defendant has the proper level of access to such material in preparing his defense. The contested protected materials shall be submitted in camera or under seal to the Court for evaluation, not publicly filed.

Respectfully Submitted,

Dated: August 4, 2023

PHILLIP A. TALBERT
United States Attorney

By: /s/ EMILY G. SAUVAGEAU
EMILY G. SAUVAGEAU
Assistant United States Attorney

Dated: August 4, 2023

/s/ CHRISTINA SINHA
CHRISTINA SINHA
Counsel for Defendant
Esteban Xavier Monroy

~~[PROPOSED]~~ FINDINGS AND ORDER

The Court having read and considered the Stipulation and Joint Request for a Protective Order, which this Court incorporates by reference into this Order in full, hereby finds that GOOD CAUSE exists to enter the above Order.

IT IS SO FOUND AND ORDERED this 4th day of August , 2023.

Jeremy D. Peterson
THE HONORABLE JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE